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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,830	11/04/2003	Liran B. Cohen	N9358	5775
23456	7590	12/14/2004	EXAMINER	
WADDEY & PATTERSON 414 UNION STREET, SUITE 2020 BANK OF AMERICA PLAZA NASHVILLE, TN 37219			PICKETT, JOHN G	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 12/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/700,830	<b>Applicant(s)</b> COHEN ET AL.
	<b>Examiner</b> Gregory Pickett	<b>Art Unit</b> 3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 04 November 2003.

2a)  This action is FINAL.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-13 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1,2,4,5,7,8 and 10-13 is/are rejected.

7)  Claim(s) 3,6 and 9 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 04 November 2003 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/5/04.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_.

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the third sidewall defining an inner container in claim 10 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. Currently claim 8 sets forth two sidewalls, as shown in the current drawings, while claim 10 appears to set forth an additional sidewall.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 10 and 11 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification is not enabling for a container with three sidewalls.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
3. Claims 1, 2, 4, 5, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pita et al (US 5,171,081) in view of Steigerwald et al (US 5,370,222).

Regarding claim 1, Pita discloses a chemiluminescent vessel comprising a double wall container 10 with a first sealed cavity 24, a second sealed cavity 32, a first chemiluminescent fluid 40, a second chemiluminescent fluid 36, and a frangible barrier 38. Pita et al lacks, or does not expressly disclose a rotatable member. One of ordinary skill in the art would have recognized that Pita et al lacks a closure.

Steigerwald et al discloses a closure 1 that ruptures a frangible barrier 8 upon rotation of the closure (see Figures 1 and 2). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the vessel of Pita et al with a closure as taught by Steigerwald in order to seal the vessel.

As to claim 2, placement of the closure of Steigerwald et al on the vessel of Pita et al prevents rupture of the ~~closure~~ ~~of the~~ frangible barrier.

As to claim 4, the vessel of Pita-Steigerwald is adapted to form a sealable closure.

Regarding claim 5, the vessel of Pita-Steigerwald, as applied to claim 2 above, discloses the claimed invention.

As to claim 7, the vessel of Pita-Steigerwald, as applied to claim 4 above, discloses the claimed invention.

4. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pita et al (US 5,171,081) in view of Daenen (Des. 259,011).

Pita et al discloses a chemiluminescent vessel 10 with an outer wall 12, an inner wall 16, a first component cavity 24, a first chemiluminescent fluid 40, a frangible barrier 38, a toroidal tube 28, second component cavity 32, and second chemiluminescent fluid 36. Pita et al lacks, or does not expressly disclose an interrupted torus with a tab receiving area. One of ordinary skill in the art would have recognized that the toroidal rim of Pita et al would present a problem in the flow of fluids over the rim.

Daenen discloses a receptacle with a rounded rim and a pouring spout (see Figure 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the container of Pita et al with a pouring spout as taught by Daenen in order to better direct the flow of fluids from the container. Such a pouring spout would constitute a tab receiving area as defined by the applicant.

5. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kurdian (US 6,474,467).

Kurdian discloses a chemiluminescent vessel 14 with a sealable container 16 adapted to hold a selected fluid (see Figure 2) and adapted to produce a chemiluminescent light (see Col. 4, lines 1-3). Kurdian does not expressly disclose the color of the fluid or the light. It would have been an obvious matter of design choice to one of ordinary skill in the art at the time the invention was made to select the claimed color of the fluid and/or light since the invention would have performed equally well with

any color scheme. A change in aesthetic (ornamental) design generally will not support patentability. *In re Seid*, 73 USPQ 431.

***Allowable Subject Matter***

6. Claims 3, 6, and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 571-272-4560. The examiner can normally be reached on Mon-Fri, 9:30 AM - 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Greg Pickett  
Examiner  
9 December 2004



Mickey Yu  
Supervisory Patent Examiner  
Group 3700